INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Argument	8
I. There is no conflict with *United States* v. *Johnson*	9
II. The court below correctly held that there was no evidence that the grand jury or the petit jury was illegally or unfairly drawn	12
III. There was no error in the returning of a separate verdict on each indictment	14
IV. The cross-examination of petitioner and argument by Government counsel were neither improper nor prejudicial	15
A. The cross-examination of petitioner	15
B. The argument by Government counsel	17
Conclusion	19
Appendix A	20
Appendix B	23

CITATIONS

Cases:

Agnew v. *United States*, 165 U. S. 36	10, 14
Berger v. *United States*, 295 U. S. 78	15
Ard v. *United States*, 54 F. (2d) 358	14
Cravens v. *United States*, 62 F. (2d) 261, certiorari denied, 289 U. S. 733	10
Crumpton v. *United States*, 138 U. S. 361	18
Glasser v. *United States*, 116 F. (2d) 690, Nos. 30–32, this Term	13
Gleckman v. *United States*, 80 F. (2d) 394, certiorari denied, 297 U. S. 709	11
Gridley v. *United States*, 44 F. (2d) 716, certiorari denied, 283 U. S. 827	18
Guzik v. *United States*, 54 F. (2d) 618, certiorari denied, 285 U. S. 545	11
Hyde v. *United States*, 225 U. S. 347	10, 14
Lewis v. *United States*, 279 U. S. 63	14

437547—42——1

Cases—Continued. Page

Malone v. *United States*, 94 F. (2d) 281, certiorari denied, 304 U. S. 562 18

Mulloney v. *United States*, 79 F. (2d) 566, certiorari denied, 296 U. S. 658 10

Ruthenberg v. *United States*, 245 U. S. 480 14

Tuckerman v. *United States*, 291 Fed. 958, certiorari denied, 263 U. S. 716 18

United States v. *Cotter*, 60 F. (2d) 689, certiorari denied, 287 U. S. 666 15

United States v. *Frankel*, 65 F. (2d) 285, certiorari denied, 290 U. S. 682 14

United States v. *Johnson, et al.*, 123 F. (2d) 111, pending on petition for certiorari, Nos 799-800, this Term 9

United States v. *Socony-Vacuum Oil Co.*, 310 U. S. 150 ..... 15, 18

United States v. *Wexler*, 79 F. (2d) 526, certiorari denied, 297 U. S. 703 18

Statutes:

Act of April 30, 1934, c. 170, 48 Stat. 648, Sec. 1 (U. S. C., Title 18, Sec. 556a) 13, 21

Judicial Code:

Sec. 79 (U. S. C., Title 28, Sec. 152) 9,10,20

Sec. 276 (U. S. C., Title 28, Sec. 412) 14, 20

Sec. 277 (U. S. C., Title 28, Sec. 413) 14, 21

Revenue Act of 1932, c. 209, 47 Stat. 169, Sec. 145 21

Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 145 (U. S. C., Title 26, Sec. 145) 21

Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 145 21

Revenue Act of 1938, c. 289, 52 Stat. 447, Sec. 145 21

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 813

WILLIAM R. SKIDMORE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 486–496) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 31, 1941 (R. 497), and a petition for rehearing denied on December 4, 1941 (R. 498). The petition for a writ of certiorari was filed December 24, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925, and the Rules of Practice and Procedure in Criminal Cases promulgated by this Court.

QUESTIONS PRESENTED

While the petitioner lists some twenty points to be urged as errors, it appears that the principal questions involved are the following:

1. Whether the indictments were returned by grand juries lawfully continued during a second term of court.

2. Whether the court below correctly held that there was no evidence that the grand jury or the petit jury was illegally or unfairly drawn.

3. Whether there was any error in the returning of a separate verdict on each indictment.

4. Whether the court below correctly held that there was no improper cross-examination of the petitioner.

5. Whether there was any error in the final arguments to the jury.

STATUTES INVOLVED

The relevant provisions of the statutes involved are set forth in Appendix A, *infra*, pp. 20–22.

STATEMENT

On September 1, 1939, a grand jury impaneled in the June term of court in the Northern District of Illinois returned an indictment, No. 31770,

against the petitioner containing five counts, charging wilful attempts to defeat and evade his individual income taxes for the years 1933 through 1937, respectively [1] (R. 5–21). On February 29, 1940, a second indictment, No. 32125, was returned against the petitioner in the same court by a grand jury impaneled in December 1939, charging the commission of a similar offense for the year 1938 [2] (R. 27–30). These indictments were consolidated for trial, and after trial before a jury the petitioner was convicted on the latter and the fourth and fifth counts of the former (R. 426–430).

On May 9, 1940, the petitioner filed a plea to each indictment praying that it be quashed for the reason, among others, that the investigation against him had not commenced at the initial term of the grand jury (R. 32–33, 41–42). These pleas were set for hearing, and after hearing, upon motion of the United States Attorney, each was stricken (R. 34, 43–47). Motions for bills of particulars also were filed (R. 35–39) and denied (R. 48).

On February 24, 1941, the day the trial began (R. 472–473), the petitioner filed a motion to

---

[1] The amount of tax alleged to have been evaded for each year is as follows: First Count, 1933, $24,027.86; Second Count, 1934, $79,517.70; Third Count, 1935, $54,810.82; Fourth Count, 1936, $19,277.82; Fifth Count, 1937, $32,483.33 (R. 5, 8, 11, 14, 17).

[2] These indictments are based upon Sec. 145 (b) of the Revenue Acts of 1932, 1934, 1936, and 1938 (Appendix A, *infra*, p. 21).

quash the consolidated indictments (R. 52–78), upon the ground, among others, that the grand jury was not properly selected (R. 54). In the first paragraph of this motion the petitioner by reference to the pleas in abatement made the same objections to jurisdiction as had been made by way of such pleas (R. 52.) He also made an oral challenge to the petit jury venire upon the ground that it had not been properly selected (R. 80–81). All these motions were overruled (R. 51, 88). After the entry of a plea of not guilty (R. 51), the case proceeded to trial before a jury (R. 79–426).

The petitioner was engaged, among other things, in the junk business in Chicago, Illinois, with an office at 2840 South Kedzie Avenue (R. 98–99). No Federal income tax returns were filed by him until 1933 when, following an investigation by revenue agents covering the years 1929, 1930, and 1931[3] (R. 98, 152–154, 275), he filed one for the year 1932 (R. 320). For the prosecution years, 1933–1938, the petitioner filed returns reporting income taxes aggregating $7,952.28[4] (R. 322, 324, 326, 328, 331, 334). The evidence at the trial, however, established that during these years he did not report substantial sums received from bookmakers

[3] As a result of this investigation delinquent returns covering these years were made out for the petitioner by the Commissioner and taxes and interest of approximately $9,200 were paid (R. 149, 152, 155, 275).

[4] The amounts reported for each year are as follows: 1933, $558.12; 1934, none; 1935, $162.70; 1936, $3,292.16; 1937, $2,492.91; 1938, $1,446.39 (R. 322, 324, 326, 328, 331, 334).

for the privilege of operating (R. 101, 114, 119, 121–122, 127, 130, 134, 141) and that he expended in cash sums materially in excess of his reported income and available cash resources (R. 214–219, 223, 276–277, 320–337).

Nine former hand-book operators testified to visiting Skidmore during the prosecution years in his junk yard, and there paying him cash in amounts from $50 to $250 a month for the privilege of operating their hand-books (R. 101, 114, 119, 121–122, 127, 130, 134, 141). The amounts paid during 1936, 1937, and 1938 by these bookmakers were approximately $4,000 in each year (R. 101–142). The petitioner did not report any income whatever from such source, and denied its receipt (R. 209, 276–277, 320–337).[5] Some of these bookmakers also testified that on the occasions when they made their payments to the petitioner they and other men were lined up outside his office awaiting their turn, and that the petitioner would make a notation of the witness' name and address when they paid him the money (R. 110, 116, 118, 120, 129, 130, 141).

One of these bookmakers testified that he was sent to the petitioner by a Ward Committeeman (R. 118–119); another by a lieutenant on the

[5] The evidence as to these unreported payments constituted direct evidence, Accordingly, there is no basis for petitioner's statement that the Government's case "was based entirely upon circumstantial evidence" (Pet. 16), and that an instruction based upon that theory should have been given.

police force (R. 115–116); and a third by the Democratic district leader of the Country Town (R. 125).[6] The petitioner held a $10,000 mortgage upon the home of a Chicago police captain (R. 294–295), and was visited in his junk yard very frequently by the Chief of the Cook County Highway Police (R. 265–266, 285). On such occasions as the bookmakers were arrested, the police merely made a showing by picking up a "wall sheet" and taking a minor employee to the station (R. 120, 121).

The uncontradicted evidence showed that during the years 1929 to 1938, both inclusive, the petitioner expended and invested the total sum of $794,289.64 (R. 223). During the prosecution years he acquired extensive real estate holdings, including several farms, a summer house, and a golf course (R. 280, 281), and made cash outlays aggregating approximately $510,000 in excess of the amounts of income reported on his returns for those years[7] (R. 214–219). The petitioner contended that these payments were made from his life's earnings (R. 147–149, 275). However, there was testimony, denied by the petitioner (R. 278), that in 1919 he stated under oath that he had no

---

[6] The first two of these individuals denied that they had done so (R. 249–252, 256). The third did not testify.

[7] Such excess expenditures for each year were as follows: 1933, $66,164.74; 1934, $117,232.61; 1935, $82,102.78; 1936, $33,095.49; 1937, $117,580.44; 1938, $94,097.67 (R. 214–219).

assets with which to pay a note on which he was an accommodation endorser (R. 180–182). No income tax returns were filed by him until 1932, at which time he told the revenue agents he hadn't made any money, at least during the years 1929, 1930 and 1931 (R. 152, 153)[8] and showed the agents the contents of a safety deposit box to prove that he had nothing there of any value other than deeds to certain property (R. 98, 99, 152, 153). Finally, it was shown by the petitioner's own statements made to revenue agents in 1936, which he stated on direct examination to be true (R. 282), concerning his cash position and net worth in 1928 and 1936, that he did not have at either of these dates sufficient cash to account for his expenditures in excess of incomes reported (R. 142–152, 221–231, 491, 492).

On March 8, 1941, after some deliberation (R. 412–425), the jury returned in court, and the foreman stated "* * * we have reached a verdict on one indictment only" (R. 425). The verdict of the jury finding the petitioner guilty for 1938 was then entered (R. 425–426). In response to

[8] Petitioner testified that he had been advised by revenue agents, since deceased, that he need not report gambling income (R. 275, 276). However, in his statement made to the revenue agents in 1936 petitioner stated that he had never made twenty-five cents out of gambling (R. 151). In his direct testimony he testified to the ownership of "very good saloons" from 1909 to 1916, the operation of a clearing house for handbooks around Chicago, and the running of a bail bond business over a period to 1928 or 1929 (R. 279).

the court's inquiry with respect to the other indictment, the foreman stated "I honestly think we will not be able to agree after further deliberations." The court, however, stated that "* * * I think I will have you retire to the jury room and make another effort. You may retire"[9] (R. 426). The jury subsequently[10] returned a verdict of guilty as charged in the fourth and fifth counts of that indictment, and not guilty on the first, second, and third counts (R. 430).

On March 21, 1941, sentences of thirty months and a fine of $5,000, together with the costs of prosecution, were entered on each of the three counts on which the petitioner was convicted, such sentences to run concurrently (R. 437–439). Upon appeal the judgments of conviction were affirmed on October 31, 1941 (R. 486–497). A petition for rehearing was denied on December 4, 1941 (R. 498).

ARGUMENT

In his petition for certiorari petitioner lists some 20 points to be urged. We shall deal only with those points which petitioner has deemed of sufficient consequence to elaborate by argument.

---

[9] The record shows that the case was first submitted to the jury at 1:38 p. m. the previous day and that the above-mentioned precedings transpired in the courtroom at about 11:25 a. m. (R. 430).

[10] At 12:20 p. m. the same day the jury reported progress was being made and at approximately 2:53 p. m. returned the verdict on the other indictment (R. 431).

I

THERE IS NO CONFLICT WITH UNITED STATES *v.* JOHNSON

Petitioner asserts that the case is similar to and in conflict with *United States* v. *William R. Johnson, et al.*, 123 F. (2d) 111 (C. C. A. 7), certiorari pending Nos. 799–800, on petition of the Government. The *Johnson* case was decided by the same court, consisting of the same three judges, six weeks before the decision in the case at bar. The opinion below states that (R. 495):

> * * * There was not one controverted question in those cases [Johnson] which is present here, and this was admitted by counsel in argument before us.

Petitioner alleges that the *Johnson* case held invalid an order extending to the March Term 1940 the tenure of the same grand jury which indicted petitioner. But the indictment in the present case was returned in February, before the extension involved in the *Johnson* case became effective, while the *Johnson* indictment was returned in March.[11]

---

[11] Petitioner's argument is based on the fact that the order extending the grand jury term to March 1940 was signed February 28, whereas the indictment in the instant case was thereafter returned on February 29. But the order extending the grand jury to the March term did not become effective until the first Monday in March, when the March term began. (Judicial Code, Section 79, 28 U. S. C., Sec. 152.)

Petitioner also urges that the decision below conflicts with the holding in the *Johnson* case as to the need of a hearing on the allegations of the pleas in abatement as to the terms of the grand jury in which the investigations commenced. The pleas contain only bare conclusions of law and not the specific allegations of fact essential to their sufficiency (R. 43, 47). *Hyde* v. *United States*, 225 U. S. 347, 373–374; *Agnew* v. *United States*, 165 U. S. 36, 44. The record shows that petitioner was given a hearing on the pleas (R. 43, 47, 487), but that he offered no evidence to support them (R. 487). The burden of proof was clearly on petitioner. *Mulloney* v. *United States*, 79 F. (2d) 566, 576, 577 (C. C. A. 1), certiorari denied 296 U. S. 658; *Cravens* v. *United States*, 62 F. (2d) 261, 269 (C. C. A. 8), certiorari denied 289 U. S. 733. Further, in his petition for rehearing in the court below petitioner criticized the court for having considered the points set forth in his pleas in abatement (R. 32, 41) on the ground that the point was "not raised by us," and "we knew that the pleas in abatement were no good."[12]

In addition to the foregoing petitioner now asserts (Pet., p. 6) that the decision of the court below conflicts with the holding in the *Johnson* case that the Government is required to prove the

[12] See petitioner's petition for a rehearing filed in the Circuit Court of Appeals, pp. 2–3, the pertinent excerpts from which are quoted in Appendix B, *infra*, pp. 23–24.

allegations in the indictment as to the continuation of the grand jury. This point was never raised at the trial, and was expressly waived by petitioner during the argument in the Circuit Court of Appeals.[13] Accordingly it was not considered in the decision of the court below and is not before this Court (R. 487).

Petitioner also asserts (Pet., p. 16), but does not argue, that the two decisions are inconsistent in their rulings on the testimony of the expert witness Clifford. In the *Johnson* case the Circuit Court held that the questions addressed to Clifford were not in hypothetical form and hence invaded the province of the jury. We believe this ruling to be erroneous, but in any event it has no bearing here as the questions addressed to Clifford in the instant case were clearly couched in hypothetical form (R. 213–249, 493). *Guzik* v. *United States,* 54 F. (2d) 618 (C. C. A. 7), certiorari denied 285 U. S. 545; *Gleckman* v. *United States,*

---

[13] It appears from p. 25 of the stenographic transcript of the oral argument in the court below, which has been forwarded to the Department of Justice by the United States Attorney in Chicago, that the following colloquy took place:

"Mr. Stewart. Well, there is one point your Honors decided in the *Johnson* case. You decided that the government must prove that the Grand Jury was held over and, of course, no such proof was made in our case, but I did not raise the point.

"Justice Major. Well, the point is not raised here.

"Mr. Stewart. No.

"Justice Major. So that is out.

"Mr. Stewart. That is out; yes.

"Justice Major. All right."

80 F. (2d) 394 (C. C. A. 8), certiorari denied 297 U. S. 709.

We submit that there is therefore no such relationship to or conflict with the *Johnson* case as to warrant a review of the decision below by this Court.

II

THE COURT BELOW CORRECTLY HELD THAT THERE WAS NO EVIDENCE THAT THE GRAND JURY OR THE PETIT JURY WAS ILLEGALLY OR UNFAIRLY DRAWN

The petitioner contends that the grand and petit jurors were hand-picked "to secure partisan jurors who favor the cause of the Government * * *" (Pet., pp. 23, 42–62). As the Circuit Court of Appeals declared, there was "not one scintilla of evidence in this case to support the charge that the grand jury or the petit jury was illegally or unfairly drawn, * * * or that the appellant was thereby harmed." (R. 489.) There was not even a suggestion that the procedure was secret or that the jurors were "hand-picked" as alleged by petitioner (Pet. p. 42). Indeed, petitioner's affidavit shows that the jurors were selected by lot (R. 59).

This point as to the grand jury was raised by a motion to quash the indictments, filed February 24, 1941, the very date of trial (R. 52), although the petitioner was presented for arraignment and

pleaded not guilty on June 3, 1940 (R. 472). This motion, therefore, was barred after June 13, 1940, by the provisions of the Act of April 30, 1934 (48 Stat. 648, c. 170, 18 U. S. C., Sec. 556a, Appendix A, *infra*, pp. 21–22) which require the filing of such pleas within ten days after arraignment.

Petitioner apparently assumed, incorrectly, that his motion to quash also challenged the composition of the petit jury; the point was argued orally, and may be treated as an oral motion (R. 80–81). The affidavits (R. 54–78) and argument (R. 80–81) in support of the motion averred that an undue proportion of both grand and petit jury panels were drawn from the rural or suburban counties of the Eastern Division of the Northern District of Illinois rather than from Cook County or Chicago.[14] Prejudice seems to be claimed on the ground that there had been considerable discussion of gambling in general and of petitioner in particular in the Chicago newspapers, and that Chicagoans would be more likely than outsiders to discount these newspaper stories, and also on the ground that this resulted in a panel not drawn

[14] Petitioner's suggestion that there is a similarity between his charges as to the selection of the juries and those in *Glasser* v. *United States* (Nos. 30, 31, and 32), argued November 13 and 14, 1941, is unfounded. In the latter case the charges related to the exclusion of women from the grand jury list and the improper selection for the petit jury of women from the League of Women Voters.

from the "ordinary walks of life" (Pet., pp. 10–12, 43–46). But it is well established that juries may be chosen from any part of the district;[15] and the charge of prejudice has no support which entitles it to serious consideration. *Hyde* v. *United States*, 225 U. S. 347, 373–374; *Agnew* v. *United States*, 165 U. S. 36, 44.[16]

III

THERE WAS NO ERROR IN THE RETURNING OF A SEPARATE VERDICT ON EACH INDICTMENT

As shown in the Statement, *supra*, pp. 7–8, the jury returned at different times its verdicts on indictments Nos. 32125 and 31770. The petitioner contends that this was improper on the ground that the consolidation of the indictments for trial made them a single indictment, that the verdict of guilty for the 1938 count was void as not covering the entire indictment, and that the second verdict on the remaining counts was also void both because not covering the 1938 count and because the jury had exhausted its powers by recording the first verdict (Pet. p. 19, 73). The mere statement of this proposition would seem sufficient to refute it. In any event separate verdicts are premissible. *United States* v. *Frankel*, 65 F. (2d) 285, 288

---

[15] *Judicial Code*, Secs. 276–277, 28 U. S. C., Secs. 412, 413; *Ruthenberg* v. *United States*, 245 U. S. 480, 482, and authorities cited; *Lewis* v. *United States*, 279 U. S. 63.

[16] In addition, the motion, made on the day trial began, was dilatory and late. *Agnew* v. *United States*, 165 U. S. 36, 43; *Aird* v. *United States*, 54 F. (2d) 358 (C. C. A. 5).

(C. C. A. 2), certiorari denied, 290 U. S. 682; *United States* v. *Cotter*, 60 F. (2d) 689 (C. C. A. 2), certiorari denied, 287 U. S. 666.

IV

THE CROSS-EXAMINATION OF PETITIONER AND ARGUMENT BY GOVERNMENT COUNSEL WERE NEITHER IMPROPER NOR PREJUDICIAL

Petitioner contends that the Government's cross-examination was improper and prejudicial and that he was also prejudiced by remarks made by Government counsel in the closing arguments. We believe it clear that the court below properly ruled that there was no error in these respects. Furthermore, in a case in which the evidence against petitioner is as strong as here, minor improprieties would not be prejudicial or ground for reversal.[17] *Berger* v. *United States*, 295 U. S. 78, 88–89; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 239.

A. THE CROSS-EXAMINATION OF PETITIONER

Petitioner objects to the Government's cross-examination of him on the grounds that it was not limited to matters brought out on direct examination and that it was prejudicial. The questions objected to in the main related to petitioner's contacts with saloons, slot machines, bookmakers,

[17] It is significant that, except by formal assignment of error, petitioner does not even argue that his conviction is not supported by the evidence.

and bail bondsmen, and petitioner's financial dealings. That questions on these subjects would not have prejudiced petitioner is apparent from the fact that he had previously admitted being a gambler (R. 276), handbook operator (R. 279), bail bondsman (R. 279), and a saloonkeeper who had been in trouble with the chief of police (R. 151), and that there had been testimony by nine other witnesses that he was a professional fixer (R. 101–142).

We believe that all of the questions were warranted by the direct examination. It seems necessary to refer only to those stressed in petitioner's argument.

The questions as to petitioner's expenditures to purchase a newspaper in 1939[18] (R. 313) and as to a judgment obtained against him by the Mills Novelty Co. in 1910 (R. 364) relate to petitioner's financial condition. They were obviously relevant in view of the testimony on direct examination (R. 275, 279, 282) that expenditures during the tax years had been from prior accumulations. The question as to why petitioner had closed a saloon (R. 296–297) was justified by his statement

[18] Petitioner was asked whether he had spent a large sum to purchase a newspaper in 1939, after he had evasively refused even to estimate how much cash he had as of December 31st, 1938 (R. 297–298, 313). Such an expenditure in 1939 would have had a bearing upon his net worth in 1938 and his income during that and previous years. The subject of petitioner's worth at various times had been put in issue on the direct examination (R. 146, 151, 282).

on direct examination that he had "very good saloons" (R. 278–279), and by his prior statement that he had closed his saloon on account of trouble with the Chief of Police (R. 151). The question as to whether petitioner's friend Mongoven was in the slot-machine business was justified by petitioner's own testimony to that effect (R. 283).[19] The prejudicial effect of questions which might have shown that petitioner associated with bookmakers and bondsmen for bookmakers must be considered in the light of his admissions that he had been a bookmaker and a bondsman (R. 279).

B. THE ARGUMENT BY GOVERNMENT COUNSEL

Petitioner contends (Br. p. 70) that his rights were improperly prejudiced because on two occasions (R. 411, 363) government counsel indicated that they believed in their case.[20] Petitioner's attorney in his argument had accused government counsel of subornation of perjury (R.

[19] This statement was made on cross-examination, but without objection.

[20] United States Attorney Woll stated: "I believe in this case; I know this man is guilty from that evidence on the witness stand. I say this evidence has proved him guilty." (R. 411.) Assistant United States Attorney Plunkett stated, before assuming, arguendo, the truth of testimony by petitioner that he thought he was worth $300,000: "All right. I don't think he was. The evidence does not show he was, and the Government does not contend that he was. We say he was not." (R. 363.) These remarks were justifiable comments on the evidence.

391), and had stated that "nobody knows better than they do that they have no case" (R. 387) and that "maybe these gentlemen haven't had the say as to the policy as to whether or not Skidmore should be prosecuted" (R. 399). When thus provoked, the mild comments of the prosecutors were entirely justifiable. *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150, 240–242; *Gridley* v. *United States,* 44 F. (2d) 716, 739 (C. C. A. 6), certiorari denied, 283 U. S. 827; *Malone* v. *United States,* 94 F. (2d) 281, 288 (C. C. A. 7), certiorari denied, 304 U. S. 562; *Tuckerman* v. *United States,* 291 Fed. 958, 968 (C. C. A. 6), certiorari denied, 263 U. S. 716; cf. *Crumpton* v. *United States,* 138 U. S. 361, 364; *United States* v. *Wexler,* 79 F. (2d) 526, 530 (C. C. A. 2), certiorari denied, 297 U. S. 703. In any event petitioner took no exception to these remarks, and did not request the court to instruct the jury in the premises.[21] *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. at 238–239; *Crumpton* v. *United States,* 138 U. S. 361–364.

---

[21] No exception at all was taken to the statement by Assistant United States Attorney Plunkett (R. 363). Petitioner's counsel did state, after the remark of United States Attorney Woll (R. 411), that "the prosecutor has no right to express his belief," but he took no formal exception. Moreover, it should be noted that the court instructed the jury to disregard any statements of attorneys not based upon the evidence (R. 414–415).

Various other points have either been listed (Pet. 21–22) or briefly mentioned by the petitioner. We believe these are fully and correctly treated in the opinion below and warrant no further comment here.

CONCLUSION

The decision below is correct. There is presented neither an important question nor a conflict of decisions. The petitioner received a fair trial, and his conviction is amply sustained by the record. It therefore is respectfully submitted that the petition should be denied.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
J. LOUIS MONARCH,
GORDON B. TWEEDY,
EARL C. CROUTER,
ROBERT L. STERN,
Special Assistants to the Attorney General.
J. ALBERT WOLL,
United States Attorney.
PAUL M. PLUNKETT,
Assistant United States Attorney.

JANUARY 1942.